103D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 103–366
Part 8

GOVERNMENT REFORM AND SAVINGS ACT OF 1993

NOVEMBER 15, 1993.—Ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 3400 which on October 28, 1993, was referred jointly to the following committees for a period ending not later than November 15, 1993: Agriculture, Armed Services, Banking, Finance and Urban Affairs, Education and Labor, Energy and Commerce, Foreign Affairs, Government Operations, House Administration, the Judiciary, Merchant Marine and Fisheries, Natural Resources, Permanent Select Committee on Intelligence, Post Office and Civil Service, Public Works and Transportation, Science, Space, and Technology, Veterans' Affairs, and Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3400) to provide a more effective, efficient, and responsive government, having considered the same, report favorably on the amendments.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 108, strike line 1 through line 20.

Beginning on page 169, strike line 14 and all that follows through line 23 on page 170.

Beginning on page 172, strike line 3 and all that follows through line 22 on page 174.

EXPLANATION OF AMENDMENTS

H.R. 3400, the "Government Reform and Savings Act of 1993," was introduced October 28, 1993, and referred jointly to 17 separate committees, including the Committee on the Judiciary, "for a

period ending not later than November 15, 1993." On November 4, 1993, the Judiciary Committee marked up H.R. 3400. At the mark-up, the Committee adopted two amendments offered by Chairman Brooks. The contents of this report constitute an explanation of the amendments made by the Judiciary Committee to the bill, H.R. 3400, as introduced.

SUMMARY AND PURPOSE

The two amendments to H.R. 3400 adopted by the Committee on the Judiciary strike provisions within the Committee's jurisdiction over administrative and judicial debt collection procedures and over medical services in the Federal prison system. These provisions raise a number of practical and substantive questions that demand deliberative scrutiny by the Committee. For instance, the debt collection provisions raise questions regarding fundamental due process rights and regarding the perceived integrity of law enforcement funding and process, while the prison provisions raise threshold and first-impression issues of administrative feasibility and constitutionality. Because of the extraordinary shortness of time the Committee was given to consider these sensitive provisions—two weeks from introduction to automatic discharge—the Committee concluded there was insufficient opportunity to give them adequate review.

COMMITTEE ACTION

On November 4, 1993, the Committee on the Judiciary met to mark up the bill, H.R. 3400. Chairman Brooks offered an amendment to strike certain provisions dealing with debt collection and with prison health care. Upon motion by Congressman Fish, the amendment was divided into two parts, the first dealing with debt collection and the second dealing with prison inmate health care. The amendment striking the debt collection provisions passed by a record vote of 21–14. The amendment striking the prison inmate health care provisions passed by voice vote. The Committee then ordered the amendments favorably reported by voice vote.

COMMITTEE VOTE

On November 4, 1993, a quorum being present, the Committee on the Judiciary by voice vote ordered the amendments adopted to the bill, H.R. 3400, favorably reported to the House.

DISCUSSION

The provisions of H.R. 3400 struck by the Committee on the Judiciary concerned two subjects: debt collection procedures and prison inmate health care.

A. Debt collection

Section 16601 of the bill, as introduced, would have amended the Federal Debt Collection Procedures Act of 1990. That law was the product of deliberations in the Judiciary Committee and its Subcommittee on Economic and Commercial Law. The purpose of the 1990 law was to provide the Justice Department with uniform Federal procedures—pre-judgment remedies and post-judgment rem-

edies—for the collection of debts owed the United States nationwide. Previously, the Federal Rules of Civil Procedure required the Justice Department, like all litigants in Federal court, to use the procedures provided under the law of the State in which the proceeding took place.

During hearings before the Subcommittee on Economic and Commercial Law in June 1990, the United States Attorneys made a strong case for uniform Federal procedures. Other expert witnesses urged the Subcommittee not to disregard, in the drive for uniformity, the important protections and due process rights given debtors and other creditors under State law. The legislation ultimately enacted carefully balanced these considerations and had the enthusiastic support of the Justice Department and United States Attorneys across the nation, as well as the approval of a broad section of the legal community.

The proposal in section 16601 of H.R. 3400, as introduced, would give Justice Department lawyers a ten-percent "surcharge" in "any action in which the United States prevails on its claim for a debt," to be deposited in a special account dedicated to the Department's "debt collection" efforts. Because in passing the 1990 Act the Committee considered and rejected such an approach, this "revived" provision appearing in H.R. 3400 particularly demands careful scrutiny by the Committee of substantive jurisdiction.

During consideration of the 1990 law, the Justice Department strongly urged, and the Committee ultimately agreed to, an all-encompassing definition of the term "debt" to give the broadest possible applicability to the new pre-judgment and post-judgment remedies. As a result, the term has an unusual, specialized meaning in the 1990 law, consistent with its specialized function. The term not only applies to virtually any sum owing to the United States Government in any capacity, including its capacity as enforcer of the public interest in civil and criminal enforcement proceedings, as well as its commercial capacity; the term also includes amounts which have not yet been judicially determined to be owing to the Government, but are merely claimed by the Government in a civil enforcement action, contract dispute, or counterclaim—and possibly even in a criminal action.

Further, the 1990 law already takes the unusual step of permitting the Justice Department of recover a ten-percent surcharge on collected "debts"—a surcharge generally not available to other litigants in American courts. This surcharge is available to the Department, however, *only* in very limited circumstances. In an attempt to balance the broad (and potentially unintended) consequences of such an expanded definition of "debt," the Judiciary Committee very carefully and deliberately limited the surcharge to cases in which the Department was compelled to resort to, and received court approval for, the extraordinary (and costly) pre-judgment and post-judgment remedies provided in the 1990 law.

In considering the surcharge provision at that time, the Committee was warned by some that a provision like that appearing in H.R. 3400 as introduced would authorize the surcharge any time the United States Government "prevails on its claim for a debt"—

even through an out-of-court settlement.[1] It was argued that such treatment might well transform the surcharge into a generalized quasi-attorney's fee; or, looked at another way, into a generalized tax on asserting any legal defense against any claim of the Government. Given the difficulty in carefully gauging the consequences of such a surtax provision on private parties who litigate in good faith, the Committee decided at that time to limit the surcharge to special situations where the cost was greatest to the U.S. Government and where a court would actively oversee the disposition of the request.[2]

Finally, it should be noted that, as a result of the recently enacted Commerce, Justice, State, and Judiciary Appropriations Act for FY 1994, the Justice Department *already* has a "debt collection fund" under which 3 percent of all monies collected are set aside for Department use in improving its system for processing and tracking civil debt collection litigation. Despite reservations about any such fund, the Judiciary Committee acquiesced in this provision because of its limited purpose and therefore, presumably, limited duration.

In summary, the Committee is unable to satisfactorily examine the potentially broad implications of these proposed changes—for both the Department of Justice and for private litigants—in the short amount of time allotted.

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[1] It should be noted that under the proposal, the surcharge could be recovered regardless of whether the Department "prevails" through an actual court adjudication, or merely "prevails" by convincing the other party to settle the claim. A court would have to "approve" any settlement for the surcharge to be available; but courts routinely approve settlements without even holding a hearing. Even cases settled before they are filed are often filed anyway, with the settlement agreement included along with the complaint, simply to memorialize the agreement. The Justice Department incurs no significant additional expense for filing its settlement agreements, of course—it is exempt from the $120 filing fee that applies to other litigants.

[2] During the 1990 deliberations, some observers warned that such an across-the-board surcharge seemed to contravene the thrust of the Equal Access to Justice Act, first passed in 1980 and permanently reauthorized in 1985. In recognition of the vastly superior litigation resources generally available to the United States Government, Congress authorized, for the first time, recovery of attorney's fees by individuals and small businesses who prevail against the Government in court, unless the Government's position is found to have been "substantially justified." The purpose of the Equal Access to Justice Act, to help protect individuals and small businesses with legitimate claims or defenses against the Government from being unduly intimidated from seeking their day in court, would be seriously undermined if all private parties to a dispute with the Government faced a ten-percent penalty for differing with the Government's position. Whether such an analogy is apposite can be taken under consideration when the Committee has the opportunity to revisit the area during a full and unconstrained hearing process.

Also during the 1990 deliberations, the Committee considered the possible advantages and disadvantages of placing some portion of any recovered debt or surcharge in a dedicated "debt collection fund," at the Department's direct disposal for funding unspecified litigation and "debt collection" activities. For the record, the Committee declined the Department's request to create such a fund in 1990. While sympathetic to the budgetary constraints on all government functions, the Committee was careful to weigh whether the normal authorization and appropriations process is preferable to a "user fee" approach that could create a dependency on unpredictable debt collection receipts for core Department funding.

The Committee's caution was, in part, the result of observing problems with respect to the use of other user fees in the Department's operations—most particularly the filing fees under the Hart-Scott-Rodino Act's premerger review. During the merger frenzy of the 1980's these fees came to be placed in a special dedicated fund for the Antitrust Division. While many believed at the time that this arrangement would help ensure adequate funding for antitrust enforcement in the face of budgetary constraints, the availability of this dedicated fund soon had the opposite effect. It allowed the general appropriation for the Antitrust Division to be reduced in reliance on the fund; when the level of mergers and acquisitions abated in the mid- to late-1980's, the Antitrust Division was left with a funding crisis, and compensating funds were difficult to find in the general appropriation, as those funds had been devoted to other uses. The Antitrust Division has yet to fully recover from this experiment with "user fees."

B. Prison inmate health care

Section 8001 of the bill as introduced would have authorized the Attorney General to impose a "nominal fee" on inmates for health services provided in the Federal prison system. The section also authorizes the Attorney General to withdraw funds from an inmate's trust fund account, without the consent of the inmate, to pay for the medical charges.

Neither the National Performance Review Office nor the Office of Management and Budget have been able to supply sufficient supporting data to justify this provision. Whether this is truly a cost-saving proposal and whether it could even be implemented in the manner suggested are open to question. A number of questions have arisen regarding the constitutional limitations of such a proposal, particularly with respect to certain psychiatric care, and particularly in light of the public health and safety dimensions. There are also questions concerning whether all funds deposited in the inmates' trust fund accounts could be made subject to forced withdrawal.

The issue of inmate medical care has been the subject of a number of oversight hearings by the Subcommittee on Intellectual Property and Judicial Administration. At the Subcommittee's request, the General Accounting Office (GAO) has conducted a comprehensive investigation into medical services provided by the Bureau of Prisons, and expects to issue its report within the next month. This GAO report should provide information which could be very useful in evaluating any proposed medical user fee.

C. Conclusion

The potential problems raised by these provisions are profound and require careful deliberation. Without question, they should not be resolved in the peremptory timeframe presented by the fast-track procedure set for H.R. 3400.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(a) of rule XI of Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because the amendments made by the Committee on the Judiciary to this legislation do not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following estimate was prepared by the Congressional Budget Office and submitted to the Committee.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 15, 1993.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed amendments to titles VIII and XVI of H.R. 3400, the Government Reform and Savings Act of 1993, as ordered reported by the House Committee on the Judiciary on November 4, 1993.

As introduced, H.R. 3400 would establish a debt collection fund within the Department of Justice and would allow the Bureau of Prisons to charge a fee for health services provided to inmates. CBO estimates that establishment of the debt collection fund would generate net savings, subject to appropriations action, of $61 million over the fiscal years 1994 through 1998, and that the user fee would increase offsetting receipts by negligible amounts over the same period. Because the committee struck both provisions, we expect that, relative to H.R. 3400 as introduced, enactment of the amendments would reduce savings (that is, increase outlays) by $61 million through 1998. The estimated outlay increase would be $17 million in 1994 and $11 million in each of the subsequent four years. These amounts would not be direct spending because the savings in the introduced version would be subject to appropriations action.

Enactment of the committee's amendments would have no effect on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, *Director*).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rules XI of the Rules of the House of Representatives, the Committee estimates that the amendments made by it to H.R. 3400 will have no significant inflationary impact on prices and costs in the national economy.

Dissenting Views of Hon. Hamilton Fish, Jr., Hon. Carlos J. Moorhead, Hon. Henry J. Hyde, Hon. F. James Sensenbrenner, Jr., Hon. Bill McCollum, Hon. Howard Coble, Hon. Lamar S. Smith (TX), Hon. Steven Schiff, Hon. Jim Ramstad, Hon. Elton Gallegly, Hon. Charles T. Canady, Hon. Bob Inglis, and Hon. Robert W. Goodlatte

When the Judiciary Committee met to consider the "Government Reform and Savings Act of 1993"—H.R. 3400—the Democrat members of the Committee voted to strike two provisions from the bill.[1] If implemented, these provisions would save the taxpayers an estimated $974.8 million. Given the origin and nature of these two proposals, this action on the part of the Committee's Democrats can only be described as ironic and ill-advised.

First, it is important to understand that this measure is a Clinton Administration proposal. Specifically, H.R. 3400 is intended to implement a number of the recommendations contained in Vice President Gore's National Performance Review Report. The bill was introduced by Majority Leader Gephardt on October 28, 1993 and a November 15 deadline was established for Committee action on the bill. Second, while this automatic discharge provision made it difficult, it certainly was not impossible for the relevant Judiciary Subcommittees to hold hearings prior to our markup. The brief time period allowed for committee consideration does not justify the Judiciary Committee's action. Simply put, we should not walk away from this tremendous opportunity to save the taxpayers real money.

DEBT COLLECTION

On a motion by Mr. Brooks, the Committee voted to strike proposed amendments to the "Federal Debt Collection Procedures Act of 1990" (Pub. L. 101–647). In 1990, the Judiciary Committee approved that legislation, which was intended to enhance the powers of the Justice Department to collect debts owed the United States government. The debt collection law already contains a provision that entitles the United States to receive a 10% surcharge on the amount of the debt owed, when the United States has to go to court to collect the debt. 28 U.S.C. § 3011(a). However, restrictive judicial interpretations of the current law have prevented the United States from collecting the surcharge in a number of civil cases. The provision removed by the Judiciary Committee—on a straight party line roll call vote of 21–14—would greatly strengthen the ability of the United States to obtain the 10% surcharge in these cases (i.e.,

[1] Title VIII—Bureau of Prisons Health Services User Fee, Section 8001; Title XVI, Subtitle E—Strengthening Debt Collection Program, Section 16501, and Subtitle F—Improving Department of Justice Debt Collection, Section 16601.

when there is an actual court judgment or when the court has approved a settlement).

Any suggestion that the proposed language permits the government to collect a surcharge in a criminal case is farfetched, because a criminal prosecution is not a "claim for a debt". If a criminal defendant, however, fraudulently transfers assets to avoid paying a debt—and the government is forced to litigate a fraudulent transfer action to a successful conclusion—a surcharge would be available under the proposed language. The result recognizes the legitimate interests of the United States—which is forced to litigate in such situation.

Importantly, this provision does not in any way alter the procedural, due process requirements (both pre-judgment and post-judgment) that must be followed by the United States under the Federal Debt Collection Procedures Act of 1990. The provision does direct the surcharge proceeds be deposited in a new Debt Collection Fund. These monies would be earmarked for use by the Justice Department and other federal agencies to defray the expenses incurred in connection with debt collection litigation, enforcing judgments and related collection activities.

The establishment of a Debt Collection Fund—which Subtitle F would authorize—would prove helpful in spurring greater debt collection efforts. We need to encourage such efforts because the American people collectively bear a heavier burden when our government fails to collect on legitimate obligations.

The surcharge, which can only apply if the United States prevails in an action on its debt claim, is entirely appropriate to compensate the federal government for the time and expense of litigation. By making a specific Fund available to support broader debt collection efforts, we would help provide the Department of Justice and other executive branch agencies with needed resources to pursue sums owed to the United States. If the amount in the Fund exceeds $15 million in unappropriated funds at the end of a fiscal year, those excess amounts would go directly to the general fund of the Treasury.

This proposal, which grew out of the recommendations of the National Performance Review, is fully consistent with our overall effort begun a few years ago to streamline and enhance federal debt collection. The estimated savings from this proposal would be $961 million.

PRISONER HEALTH CARE

The other provision that was removed from the "Gore Performance Review legislation" would have allowed the Attorney General to "assess a nominal fee" for health services provided to federal prison inmates. Specifically, the Attorney General would be authorized to withdraw a nominal amount from a prisoner's trust fund account to partially defray the cost of the health services provided to that prisoner. Under the language of the section, the Attorney General would have the discretion to waive or refund the fee for "good cause" and no inmate would be denied health care because of an inability to pay the health services fee. The estimated savings from this proposal would be $13.8 million.

Again, taken together, these two provisions would save America's taxpayers $974.8 million. How can the House of Representatives justify such a result? Both provisions should be restored to H.R. 3400.

HAMILTON FISH, Jr.
HENRY J. HYDE.
BILL MCCOLLUM.
F. JAMES SENSENBRENNER, Jr.
HOWARD COBLE.
BOB INGLIS.
ROBERT W. GOODLATTE.
JIM RAMSTAD.
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CARLOS J. MOORHEAD.
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